IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MICHAEL JACKSON **APPELLANT**

V. **CAUSE NO. 2013-CA-00434-COA**

ROSIE JACKSON **APPELLEE**

PETITION FOR WRIT OF *CERTIORARI*

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ARGUMENT FOR *CERTIORARI*

A. MISCALCULATION OF THE MARITAL ESTATE – THE COURT OF APPEALS AFFIRMS DOUBLE COUNTING MARITAL INDEBTEDNESS.

1. There are several reasons to grant *certiorari* in this case. However, the most clear-cut reason is an ostensible miscalculation by the Court of Appeals which would change the way marital estates are calculated in Mississippi. If the decisions by the Trial Court and Court of Appeals stand, the indebtedness owed marital property can be counted twice under Mississippi law, necessarily undervaluing the share of one of the spouses and indicating an award of alimony where an appropriate calculation would not. The Court should grant *certiorari* to make clear that indebtedness on marital property should be counted only once in a *Ferguson* analysis.

2. This case involved the divorce of Rosie Jackson ("Rosie) and Michael Jackson ("Michael"). The couple were married since 1976 and had two adult children by the time this case came to trial. The Chancellor granted Rosie a divorce based on habitual cruel and inhuman treatment.

3. The Chancellor awarded Rosie the marital home. The Parties stipulated at trial that the marital home was worth $78,000. (*See* T. p. 197; Trial Exhibit 9. *See also* C.P. p. 64). The mortgage balance owed on the marital home was $50,103. (T. p. 55). Thus, the equity in the marital home was $27,897. (*See id.*).

4. The Trial Court began its analysis by considering the *equity* in the marital home which Rosie was awarded. The equity, the value of the home reduced by the indebtedness, was $27,897. By doing this the Court, correctly at this step, reduced the home's value by the debt. However, the Court then **again** reduced the value of Rosie's distribution by the mortgage indebtedness. Thus, the Court reduced the value of the assets awarded to Rosie by the amount of

the mortgage debt ($50,103) **twice**. The Court of Appeals' opinion accepts the Chancellor's reasoning in this regard, which was as follows:

> Rosie will receive Thirty-One Thousand Nine Hundred Twenty-Eight Dollars ($31,928) in marital assets and Fifty Thousand One Hundred Three Dollars ($50,103.00) in marital liabilities, leaving her with a net award after equitable distribution of a ***negative*** Eighteen Thousand One Hundred Seventy-Five Dollars (-$18,175.00).

(C.P. p. 90) (emphasis added). By doing this, the Chancellor counted the mortgage debt twice. Indeed, a mathematical error is the only explanation for the illogical conclusion that Rosie received a negative valued distribution, when she in fact received a house worth substantially more than was owed on it.

5. The $31,928 in marital assets was already reduced by the mortgage debt, because the Court arrived at that number by considering the equity in the home. Reducing Rosie's distribution by the same debt again was a mathematical error. This counted the mortgage debt twice, and thus indicated that Rosie's distribution was worth $50,103 less than it really was. Simply put, if the Court considers the "equity" of the marital home it has already, by definition, reduced the value by the mortgage debt. To subtract the mortgage debt again later in the analysis is inherently incorrect, and leads to an undervaluing of the distribution.

6. The Court of Appeals' opinion does not address this issue, or how this could not be a double-counting of the debt. The opinion's discussion of this issue was limited to the following:

> Michael was granted the majority of the marital assets, with Rosie receiving the majority of the marital liabilities. In assigning the assets and liabilities concerning the marital home, the chancellor stated, "Michael will no longer be financially responsible for payment of the mortgage, and will be under no other obligation, financial or otherwise, with regard to the marital home, after entry of this Final Judgment." It is clear that the chancery court's intent was for Michael to no longer have involvement in the marital home. Therefore, we find that the chancellor's findings are supported by credible evidence and are not manifestly wrong.

Slip Op. p. 15.

7. The Court of Appeal's conclusion is completely true, as far as it goes. However, respectfully, it has nothing to do with this issue. The issue is whether counting the mortgage debt twice undervalued what the Court considered to be Rosie's distribution. It undisputedly did. It does not matter that Rosie was awarded the marital home and Michael would have no further ownership of it. What matters is that the mortgage debt was put into the equation twice – once by only counting the "equity" in the home (instead of the home's value) and again by reducing the equity by the mortgage debt. This undervalued the amount of property which Rosie really received. This erroneous calculation is the reason the Chancellor found that Rosie's distribution had a value of "negative $18,175."

8. The value of the marital home in this case was $78,000. The mortgage debt was $50,103. Thus, the equity in the home was $27,897. The Chancellor and the Court of Appeals' opinion, then **again** reduce that equity by the mortgage balance. By definition, reducing "equity" by the debt owed on the property double-counts the debt. Thus, based on this error, the Chancellor's analysis would show that the home has a negative worth, rather than the $27,897 in equity which actually existed.

9. This is a miscalculation of the marital estate which led to an award of alimony. Errors in calculation of the marital estate require reversal of the distribution and an accompanying award of alimony. *See, e.g., McKissak v. McKissack*, 45 So. 3d 716, 723 (Miss. Ct. App. 2010); *Gray v. Gray*, 909 So. 2d 108, 112-13 (Miss. Ct. App. 2005). *See also* BELL ON MISSISSIPPI FAMILY LAW § 9.01 (2d Ed. 2011) (noting that "when a court's division of marital property is reversed, an accompanying award or denial of alimony must also be reversed."). Mississippi appellate

courts have reversed for similar computational errors. *Coggins v. Coggins*, 81 So. 3d 285, 288 (Miss. Ct. App. 2012).

10. The mathematical error in this case is hard to catch and easy to make. However, the error is clear-cut. Unless *certiorari* is granted and the opinion corrected, the decision in this case could ostensibly stand for a unique, and incorrect, method of calculating the value of a marital estate under Mississippi law.

11. The opinion in this case perpetuates the error in the valuation of the martial estate in this case. The Court should grant *certiorari* to clarify the law.

B. THE COURT OF APPEALS MISAPPLIED THE HARMLESS ERROR DOCTRINE AND THE DOCTRINE WAS NOT RAISED IN BRIEFING.

12. The Court of Appeals concluded that the Chancellor erred by admitting hearsay testimony regarding statements made by Ace Pulliam, but finds that the error was harmless. There are two reasons *certiorari* should be granted in this regard: 1) admission of the hearsay was not harmless, but was highly prejudicial and 2) Appellee did not argue the harmless error doctrine as to this issue and thus waived this argument on appeal.

13. The Chancellor considered Rosie's testimony that Ace Pulliam told her of statements made by Michael directly implicating Michael in homosexual acts. The Court of Appeals concluded that admission of this hearsay was error, but that the error was harmless. Respectfully, this cannot be. There is no way to logically conclude that the Chancellor would have granted a divorce without this inflammatory evidence. Indeed, the record would be far too sparse to support a divorce without this evidence. At the least, the Court of Appeals should have remanded the case for the Chancellor to consider whether a divorce was warranted without this inadmissible evidence.

14. The admission of the hearsay testimony was highly prejudicial to Michael and was not harmless error.

15. In any event, Appellee never raised the harmless error doctrine as to admission of this testimony. The only references in Appellee's Brief to harmless error was in response to Michael's arguments regarding the valuation of the marital estate. (*See* Appellee's Brf. at p. 6, 21, 22). Appellee *never* contended before the Court of Appeals that admission of the hearsay testimony was harmless error. This Court has routinely instructed that appellate Courts should not consider any argument not raised in the Briefs. *Goodwin v. Derryberry Co*., 553 So. 2d 40, 43 (Miss. 1989); *R.C. Petroleum, Inc. v. Hernandez*, 555 So. 2d 1017, 1023 (Miss. 1990); *Greenlee v. Mitchell*, 607 So. 2d 97, 109 (Miss. 1992).

16. The Court's *sua sponte* consideration of an argument not raised by Appellee likewise justifies *certiorari*. This Court should clarify that in adversarial practice before Mississippi appellate Courts, the Court will not consider arguments never presented.

C. THE RECORD IS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT A DIVORCE BASED ON HABITUAL CRUEL AND INHUMAN TREATMENT.

17. The divorce in this case stands on the following evidence:

a. An allegation by "James" that Michael molested him twenty-six years before the divorce case was filed; and

b. Testimony from Michael's daughter claiming that she heard Michael ask a man for oral sex in 2008.

18. Michael vehemently disputes these allegations. However, this conduct, even if it had been true, cannot justify a divorce under Mississippi law. First of all, even if this otherwise met the definition of habitual cruel and inhuman treatment, the conduct is not "routine and continuous." The allegedly cruel treatment must be "routine and continuous" rather than an

isolated occurrence. *See Moore v. Moore*, 757 So. 2d 1043, 1047 (Miss. Ct. App. 2000); *Parker v. Parker*, 519 So. 2d 1232, 1234 (Miss. 1988).

19. Second, even if those hurdles were overcome (and they were not) the "proof" as to the conduct's subjective effect on Rosie is insufficient. Rosie claimed that upon learning of the allegations against Michael her blood pressure, blood sugar and even her cholesterol levels were elevated. She testified she began taking an anti-anxiety medication intermittently at some time. This was insufficient proof of a sufficient subjective effect to support an award of divorce.

CONCLUSION

20. Accordingly, for these reasons, this Court should grant *certiorari*. The Court should grant *certiorari* to clarify that indebtedness owed on marital property may not be counted twice, and that an alimony award based on such a faulty calculation will be reversed. The Court should grant *certiorari* to clarify application of the harmless error doctrine. Finally, the Court should grant *certiorari* because, in any event, the Record cannot support a divorce based on habitual cruel and inhuman treatment.

21. This Court should reverse the decision of the Court of Appeals and the Chancery Court.

RESPECTFULLY SUBMITTED, this the 24th day of March, 2015.

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CERTIFICATE OF SERVICE

I, R. Shane McLaughlin, attorney for the Appellant in the above styled and numbered cause, do hereby certify that I have this day submitted a true and correct copy of **Petition for Writ of *Certiorari*** to all counsel of record and the Trial Court Judge by electronic filing or by placing said copy in the United States Mail, postage-prepaid, addressed as follows:

Hon. Talmadge D. Littlejohn
Chancellor
Post Office Box 869
New Albany, Mississippi 38652

Luanne Stark Thompson
Post Office Box 360
Amory, MS 38821-0360

This the 24th day of March, 2015.

/s/ R. Shane McLaughlin

CERTIFICATE OF FILING

I, R. Shane McLaughlin, attorney for the Appellant in the above styled and numbered cause, do hereby certify, pursuant to Miss. R. App. P. 25(a), that I have this day filed **Petition for Writ of *Certiorari*** by filing the document with the Court's MEC e-filing system.

This, the 24th day of March, 2015.

/s/ R. Shane McLaughlin